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APPLICATION NO.	FILI	NG DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/817,014	03/23/2001		Jose Remacle	VANM213.001AUS	5730
20995	7590	08/15/2002			
KNOBBE N	MARTENS	S OLSON & BE	EXAMINER		
2040 MAIN FOURTEEN	TH FLOOF	₹	SPIEGLER, ALEXANDER H		
IRVINE, CA 91614				ART UNIT	PAPER NUMBER
				1637	12

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	09/817,014	REMACLE ET AL.					
Office Action Summary	Examiner	Art Unit					
	ALEXANDER SPIEGLER	1637					
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address					
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period w. - Failure to reply within the set or extended period for reply will, by statute, - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). Status	6(a). In no event, however, may a reply be tim within the statutory minimum of thirty (30) days ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONED	ely filed swill be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).					
1) Responsive to communication(s) filed on Ame	Responsive to communication(s) filed on <u>Amendment filed C 12/11/01</u> .						
2a) This action is FINAL . 2b) ⊠ Thi	s action is non-final.						
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims							
4) Claim(s) 1-39 is/are pending in the application.							
4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
6) Claim(s) is/are rejected.							
7) Claim(s) is/are objected to.							
8) Claim(s) <u>1-39</u> are subject to restriction and/or election requirement.							
Application Papers							
9)☐ The specification is objected to by the Examiner.							
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.							
If approved, corrected drawings are required in reply to this Office action.							
12) The oath or declaration is objected to by the Examiner.							
Priority under 35 U.S.C. §§ 119 and 120							
13) Acknowledgment is made of a claim for foreign priority under 35 U.S C. § 119(a)-(d) or (f).							
a) ☐ All b) ☐ Some * c) ☐ None of:							
 Certified copies of the priority documents have been received. 							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).* See the attached detailed Office action for a list of the certified copies not received.							
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).							
a) ☐ The translation of the foreign language provisional application has been received. 15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.							
Attachment(s)							
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informal I	(PTO-413) Paper No(s) Patent Application (PTO-152)					
S Patent and Trademark Office CTO 326 (Pay 04 01) Office Ac	tion Summary Sharen Ten	Part of Paper No. 12					

SHARON N. THORNTON PATENT ANALYST

Application/Control Number: 09/817,014

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DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-23 and 38-39, drawn to methods of identifying an organism by detecting its nucleic acid sequence, classified in class 435, subclass 6.
 - II. Claims 24-37, drawn to kits comprising a insoluble solid support comprising a capture nucleotide sequence, classified in class 536, subclass 24.3.
- 2. The inventions are distinct, each from the other because of the following reasons:
- A) Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the kit of Invention II can be used in a materially different method, such as an in-situ hybridization or nucleic acid amplification method.
- 3. Because these inventions are distinct for the reasons given above and have acquired a different status in the art as demonstrated by their different classification and recognized divergent subject matter and because inventions I-I require different searches that are not coextensive, examination of these distinct inventions would pose a serious burden on the examiner and therefore restriction for examination purposes as indicated is proper.

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- 4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
- 5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander H. Spiegler whose telephone number is (703) 305-0806. The examiner can normally be reached on Monday through Friday, 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (703) 308-1119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 and (703) 305-3014. Applicant is also invited to contact the TC 1600 Customer Service Hotline at (703) 308-0198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Alexander H. Spiegler

August 13, 2002

KENNETH R. HORLICK, PH.D.
PRIMARY EXAMINER

8/13/02